

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SETH PAUL LEMKE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-08-06-HE
)	
DENNIS BANTHER, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing pro se, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. United States District Judge Joe Heaton has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). The matter is before the undersigned pursuant to the Court's January 13, 2009, Order adopting the undersigned's recommendation that Defendant Dennis Banther's motion to dismiss the complaint be granted.

In particular, the Court's order adopted the undersigned's Report and Recommendation and granted Defendant Banther's motion to dismiss unless Plaintiff filed an amended complaint amending his claims against Defendant Banther by February 2, 2009. See Doc. No. 29. Plaintiff has not filed an amended complaint as of this date, which is well outside the time period prescribed by the Court. Accordingly, it is recommended that Plaintiff's claims against Defendant Banther be dismissed.

RECOMMENDATION

For the foregoing reasons, the undersigned recommends that Plaintiff's claims against Defendant Banther be dismissed. Plaintiff is advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by March, 12, 2009, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal questions contained herein. Moore v. United States, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation does not dispose of all the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 20th day of February, 2009.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE